IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6076 OF 2005

Mrs. Ambika Shivaji G. Naidu ..Petitioner.

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr.N.V.Walawalkar with S.D. Patil for the Petitioner.
Mr. S.K.Chinchalikar, AGP, for the Respondent No.1.
Mr.Y.S.Jahagirdar with R.N.Kachare for the Respondent No.2.

CORAM : S. A. BOBDE, J.
DATED : 10TH OCTOBER, 2005.

P.C.:

1. Rule returnable forthwith. Mr. Chinchalikar, learned AGP for respondent No.1 and Mr. Kachare, Advocate, for respondent No.2 appear and waives service of rule. Heard by consent.

2. The petitioner is aggrieved by the order dated 16.08.2005 passed by Additional Collector, Mumbai Suburban District, in purported exercise of his powers under the Bombay Entertainments Duty Act, 1923, hereinafter referred to as 'the Act'; cancelling a certificate issued in her name.

3. The dispute between the parties arises out of a certificate issued in favour of the Respondent No.2-

Bhavani Prasad Murlidhar Naidu under section 3 of the Act, for doing the business of cable operator. This certificate is issued under section 4(2)(b) of the Act. Section 4 (2)(b) reads as follows :-

"4. Method of levy :-

(1) .....

(2) [Every proprietor of any entertainment in respect of which the entertainment duty is payable under section 3, shall apply to the prescribed officer by the fifteenth days of January of every calendar year, to allow him to pay the entertainment duty due and payable, and the prescribed officer may, on receipt of such application, allow the proprietor, on such conditions as the State Governmentd may specify by general or special order issued in that behalf, to pay the amount of entertainment duty due.)

(a) .....

(b) in accordance with returns of the payments

for admission to the entertainment and on account of the duty;"

4. It appears that there is no specific power to issue a certificate, at least under section 4 of the Act. It appears that ‘licence’ or aforesaid ‘registration certificate’ was transferred to her under an order dated 05.11.2003. Therefore, according to the petitioner, she became the transferee of the certificate and is entitled to carry on the business of the Three Star Cable and pay entertainment duty.

5. Having heard the matter for some time, it appears that there is no specific provision in law empowering issuance of licence or registration certificate for payment of entertainment duty. No specific provision is relied on by either side or the State to show the power conferred on the Collector or on any other officer to issue such a certificate or transfer such a certificate in favour of any other party. In the circumstances, the original transfer claimed by the petitioner in her favour on 05.11.2003 of the registration certificate, which the respondent No.2 claims belongs to him, itself appears to be questionable. There is no application of mind by the authority to this aspect.

6. As far as the impugned order is concerned, the order appears to have been passed by the authority on the basis of the report of the Documentary Expert of the State of Maharashtra, who has obtained the opinion of the hand writing expert on 09.07.2005, which shows that the signature of Bhavani Prasad Naidu on the letter, purporting to transfer a licence in favour of the petitioner, is forged and therefore, criminal action has been initiated against the petitioner. Having regard to the nature of controversy stated above, I am of view that it is necessary to set aside the impugned order without, however, granting any stay to the direction of the authority who has issued a certificate in favour of the petitioner.

7. The authority is directed to consider the existence and exercise of the powers to grant certificate and to transfer the same from one party to another. The authority may also consider whether it has the power to receive evidence on oath and render a finding of forgery, having regard to the nature of powers conferred on it by the Act.

8. In the circumstances, impugned order is set

aside. The matter is remanded back to the authority for recording findings on the above issues.

9. I am not inclined, however, to restore the licence to the petitioner in exercise of the discretion of this court under Articles 226 and 227 of the Constitution of India in view of the report of the hand writing expert that the signature of Bhavani Prasad on the original transfer is a forgery. This shall however, not prevent the petitioner from establishing either before the appellate authority or before a competent court of law that it is not a forgery, as may be advised.

10. The authority shall decide the matter after remand on its own merits without being influenced by this order.

DT. 10.10.05 (S.A.BOBDE,J)

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